

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5749 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R N RATHOD

Versus

COLLECTOR

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Appearance:

MR MC BHATT FOR MR MP PRAJAPATI for Petitioner

MR KT DAVE ASSTT.GP for Respondent No. 1

MR HM BHAGAT for Respondent No. 2, 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/09/98

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. K. T. Dave, learned Assistant Government Pleader appearing for the respondents as instructed by Mr. H.M.Bhagat, learned Solicitor for the Government.

2. The short grievance expressed by Mr. M.C.Bhatt,

learned advocate appearing for the petitioner is that in spite of the fact that the excavated stones are lying at the respective places, the competent authority/Collector has observed that such materials are not lying at the respective places. In this connection, Mr. Bhatt has made reference to the report of the Commissioner appointed by the Civil Court in Regular Civil Suit No. 248 of 1998 filed in the Court of the learned Civil Judge, (S.D.), Palanpur. The report is dated 26th August, 1998. Mr. Bhatt has also made a reference to the directions issued by the Government on 30th September, 1997 (page 33 of the petition). The submission of Mr. Bhatt is, therefore, that the competent authority/collector should allow the excavated stones being lifted by the petitioner after due verification and after following the directions dated 30th September, 1997 issued by the Government.

3. On behalf of the Government, it has been submitted that there can be no objection for following the directions dated 30th September, 1997 issued by the Government. However, the petitioner might be directed to produce the copy of the report of the Commissioner before the competent authority. Hence, in the facts and circumstances of the case, following directions are issued :

The petitioner will immediately produce true copy of the report of the Commissioner referred to hereinabove before the competent authority - collector. Upon production of such true copy of the report of the Court Commissioner and other relevant documents, the competent authority will consider the case of the petitioner for lifting the stones already excavated pursuant to the directions issued by the Government on 30th September, 1997. The Collector - competent authority will consider the aforesaid directions dated 30th September, 1997 issued by the Government and the Commissioner's report and will pass the appropriate orders in accordance with law in respect of lifting of the material in question already excavated within four weeks from the date of receipt of these directions. Subject to these directions, rule is discharged with no order as to cost. DS Permitted.

28.9.1998. (M.S.Parikh,J.)

Vyas